

DOCKET NO: NNH-CV-17-6072389-S	:	SUPERIOR COURT
ELIYAHU MIRLIS	:	J.D. OF NEW HAVEN
V.	:	AT NEW HAVEN
YESHIVA OF NEW HAVEN, INC., FKA	:	
THE GAN, INC., FKA THE GAN	:	
SCHOOL, TIKVAH HIGH SCHOOL AND	:	
YESHIVA OF NEW HAVEN, INC.	:	APRIL 29, 2022

MEMORANDUM OF DECISION
PLAINTIFF'S MOTION TO TERMINATE STAY ENTRY NO.: 173.00
AND OBJECTION THERETO AT ENTRY NO.: 175.00

On April 25, 2022, the court heard extensive argument on the motion to terminate the appellate stay filed by the plaintiff, Eliyahu Mirlis (Mirlis). Present at the hearing were counsel for Mirlis and counsel for the defendant, Yeshiva of New Haven, Inc. (Yeshiva). This five year old case has a very complex and detailed history, which is sufficiently illustrated in Mirlis's motion and Yeshiva's objection. It will not be repeated here.

At issue is whether or not the court should terminate the appellate stay for the appeal, which was filed on March 10, 2022, and amended on April 12, 2022. The appeal challenges several trial court decisions, including: (1) the court's refusal to reopen the judgment to allow the defendant to substitute a bond; (2) the court's requirement that the defendant have cash on hand before substitution would be permitted, despite evidence showing that such cash would be imminently available upon the court's approval of a substitution; and (3) the court's refusal to reach the

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defendant's argument that it had a right to substitute as a matter of law, based on earlier rulings in the case by Judge Baio and the Appellate Court.

Mirlis argues that pursuant to Practice Book § 61-11 (d) and (e),¹ the appeal is meritless, merely a delay tactic employed by Yeshiva, and the administration of justice requires the lifting of the stay. Yeshiva disagrees.

"[S]tays during foreclosures are guided by the familiar balancing of the equities test, which requires evaluation of the relative harms and includes consideration of factors such as (1) the likelihood that the appellant will prevail; (2) the irreparability of the injury to be suffered from immediate implementation of the judgment; (3) the effect of the stay upon other parties to the proceeding; and (4) the public interest involved." (Internal quotation marks omitted.) *CitiMortgage, Inc. v.*

¹ Practice Book § 61-11 provides in relevant part: "(d) Termination of Stay

"In all cases not governed by subsection (c), termination of a stay may be sought in accordance with subsection (e) of this rule. If the judge who tried the case is of the opinion that (1) an extension to appeal is sought, or the appeal is filed, only for delay or (2) the due administration of justice so requires, the judge may at any time, upon motion or sua sponte, order that the stay be terminated. Whether acting on a motion of a party or sua sponte, the judge shall hold a hearing prior to terminating the stay.

"(e) Motions to Terminate Stay

"A motion to terminate a stay of execution filed before judgment is entered shall be filed with the trial court, and the judge who tried or presided over the matter may rule upon the motion when judgment is entered. If such a motion is filed after judgment but before an appeal is filed, the motion shall be filed with the clerk of the trial court and may be ruled upon by the trial judge thereafter. After an appeal is filed, such a motion shall be filed with the appellate clerk and shall be forwarded by the appellate clerk to the trial judge for a decision. If the judge who tried or presided over the case is unavailable, the motion shall be forwarded to the clerk of the trial court in which the case was tried, who shall assign the motion for a hearing and decision to any judge of the Superior Court.

"Upon hearing and consideration of the motion, the trial court shall file with the clerk of the trial court its written or oral memorandum of decision that shall include the factual and legal basis therefor. If oral, the decision shall be transcribed by an official court reporter or court recording monitor and signed by the trial court. If an appeal has not been filed, the clerk shall enter the decision on the trial court docket and shall send notice of the decision to counsel of record. If an appeal has been filed, the clerk of the trial court shall enter the decision on the trial court docket and send notice of the decision to the appellate clerk, and the appellate clerk shall issue notice of the decision to all counsel of record."

McLaughlin, Superior Court, judicial district of Hartford, Docket No. CV-11-6020540-S (January 24, 2014, *Vacchelli, J.*). The burden is on the appellee to demonstrate cause to terminate the stay. *TAOM Heritage New Haven, LLC v. Fuun House Productions, LLC*, Superior Court, judicial district of New Haven, Docket No. CV-18-6008208-S (March 25, 2019, *Cordani, J.*) (68 Conn. L. Rptr. 690, 691).

After reviewing all the written and oral arguments from the parties, the file contents, and portions of the Appellate Court record, the court finds that the plaintiff has failed to meet his burden. After weighing the equities, the court finds that the relative harms suffered by Yeshiva in terminating the stay outweigh the burdens and harms suffered by Mirlis.

The court will now enumerate some of the factors taken into consideration when reaching this decision. *Griffin Hospital v. Commission on Hospitals & Health Care*, 196 Conn. 451, 456-57, 493 A.2d 229 (1985) (“The federal standard focuses upon: (1) the likelihood that the appellant will prevail; (2) the irreparability of the injury to be suffered from immediate implementation of the agency order; (3) the effect of a stay upon other parties to the proceeding; and (4) the public interest involved. . . . The[se] . . . factors . . . undoubtedly warrant consideration by the trial court in the balancing process.” [Footnote omitted.]).

(1) The likelihood that the appellant will prevail

~~This is Mirlis’s strongest argument. Yeshiva is appealing a trial court~~
decision on a motion to open in order to substitute a bond. The court found that

there were no arguments in law that were persuasive and made its decision based upon the equities of the parties. The appellate court will review the trial court's decision through the prism of abuse of discretion, which is a very high burden for Yeshiva to overcome.

For these reasons, it is unlikely that Yeshiva will prevail with its appeal.

(2) The irreparability of the injury to be suffered from immediate implementation of the judgment

The practical result of terminating the appellate stay would be to transfer the property to the plaintiff and make the pending appeal moot. The Yeshiva School is a historic, unique piece of nineteenth-century real estate which cannot be duplicated or replaced. Furthermore, by terminating the appellate stay, the court will be extinguishing Yeshiva's right to have the trial court's decision reviewed for any possible errors in judgment or law. The court is hard-pressed to find a more irreparable harm than the transfer of such a unique and historic piece of property to Mirlis out from under Yeshiva. If the Yeshiva School was a fungible commodity with a fixed cash value, Mirlis would have been more inclined to accept the bond in lieu of the property when such an option was presented to him.

Furthermore, this case is distinguishable from *HSBC Bank USA v. Kriz*, Superior Court, judicial district of Ansonia-Milford, Docket No. CV-08-5007301-S (January 14, 2011, *Moran, J.T.R.*) (*HSBC Bank*). In that foreclosure case, the defendant was a mortgagor not pursuing a tort judgment. *Id.* The relationship between the plaintiff and the defendant in *HSBC Bank* was contractual. *Id.* *Kriz*

entered into an agreement where there was an element of risk that foreclosure and surrender of the property was possible. *Id.* Yeshiva is being foreclosed upon for a tort judgment. There was no prior contractual or other relationship between the parties. To deny Yeshiva its right to an appeal and transfer title of the school is an irreparable harm that Yeshiva never anticipated prior to the underlying judgment.

Conversely, Mirlis still has his judgment and, if the appellate court finds in his favor, title will transfer to him. Mirlis has failed to prove by a preponderance of the evidence that he will suffer any irreparable harm if the appellate stay is left in place.

(3) The effect of the stay upon other parties to the proceedings

There are only two parties to this matter, so this element does not apply.

(4) The public interest involved

Mirlis is correct that there is a public interest in not hindering the ability of creditors to enforce and collect their judgments. The court shares Mirlis's frustration that this case has been pending for five years with no resolution. Moreover, in many ways the court agrees with Mirlis that Yeshiva is to blame for most of these delays. The court also recognizes that the global pandemic had an impact on the speed of all cases moving towards resolution.

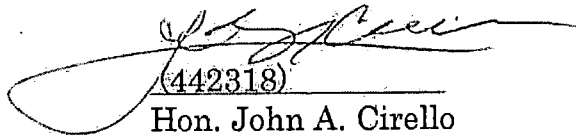
~~Nevertheless, the court cannot let the motivations of judicial efficiency and~~
economy drive it to deprive a party of its appellate rights and inflict irreparable

harm. In weighing the public interest of judicial economy with the harm to Yeshiva, the court must side with the defendant.

CONCLUSION

For the foregoing reasons, Mirlis's motion to terminate the stay is denied and the objection thereto is sustained.

BY THE COURT,


(442318)
Hon. John A. Cirello